

Exhibit 1

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the March 12, 2010 Declaration of Neil Merkl in Support of
Dey Defendants' Motion *In Limine* to Exclude from Evidence the Reports and
Testimony of Theodore R. Marmor, Ph.D.**

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

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4 IN RE: PHARMACEUTICAL
5 INDUSTRY AVERAGE WHOLESALE
6 PRICE LITIGATION,

Civil Action
No. 01-12257-PBS
MDL No. 1456

7 July 24, 2008, 3:55p.m.
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10 TRANSCRIPT OF
11 MOTION FOR CERTIFICATION OF APPEALABILITY

12 BEFORE THE HONORABLE PATTI B. SARIS

13 UNITED STATES DISTRICT COURT
14 JOHN J. MOAKLEY U.S. COURTHOUSE
15 1 COURTHOUSE WAY
16 BOSTON, MA 02210
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21 DEBRA M. JOYCE, RMR, CRR
22 Official Court Reporter
23 John J. Moakley U.S. Courthouse
24 1 Courthouse Way, Room 5204
25 Boston, MA 02210
617-737-4410

1 MR. DALY: Marmor.

2 THE COURT: I mean, it was interesting to read
3 actually, and it put me in Kennedy School mode, but it's
4 just -- I wasn't sure that that would even be
5 admissible, and I hate to make that the basis for any of
6 my decisions.

7 MR. DALY: For us, Judge, it goes a little
8 beyond that, in the sense that this guy -- and he is a
9 fairly degreed individual --

10 THE COURT: I mean, he's just obviously the guy
11 in health policy.

12 MR. DALY: What he says in his report, and --

13 THE COURT: But it's not admissible.

14 MR. DALY: But it's their expert.

15 THE COURT: Excuse me, excuse me. Not if I
16 don't let him be his expert.

17 MR. DALY: We haven't got that far.

18 THE COURT: I don't want to hold -- when I get
19 to that, if I let it in, then maybe I'll open this all
20 up. Right now, it seemed it was just him talking
21 about -- like Max Weber, what bureaucracy is doing. It
22 was real interesting, I'm just not sure I would let it
23 go to a jury.

24 MR. DALY: What he's saying, he looked into the
25 record, the existing record, and we don't have enough to

1 make our case on these points because, paragraph 41, to
2 understand what stakeholders were doing over time, one
3 has to investigate what they said, what they claimed,
4 what they thought they knew, what confused them, and
5 what options for action they, in fact, had. That's what
6 the government won't give us.

7 MR. GOBENA: That's actually not true, your
8 Honor.

9 MR. DALY: It is, it's very true.

10 THE COURT: Excuse me. I'm not sure I'm going
11 to go based on Professor Marmor's report. It was really
12 interesting to read, maybe there's some piece of it that
13 could be admitted, but at least right now it's tenuous
14 enough that I'm not going to make a decision based on
15 that.

16 However, what needs to happen is you need to
17 make decisions based on the 30 percent, and there's
18 someone sitting in this room -- there's 600 documents?

19 MR. GOBENA: There's more than that.

20 THE COURT: How many are there?

21 MR. DRAYCOTT: There's a great deal more than
22 600.

23 THE COURT: How many?

24 MR. DRAYCOTT: The total number on the privilege
25 log is going to exceed a thousand.